

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

ALAN G. & JANET M. STANFORD,

Petitioners,

v.

SAN JUAN COUNTY,

Respondent.

SHB NO. 06-004

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

A hearing was held in the above matter on June 28 and July 26, 2006. The first day of the hearing was in Seattle, and the second day was at the Board's office in Lacey, WA. The Shorelines Hearings Board was comprised of the following members: William H. Lynch, Chair, Kathleen D. Mix, Andrea McNamara Doyle, Judy Wilson, Mary Alyce Burleigh, and Peter Philley.¹ Administrative Appeals Judge, Kay M. Brown presided over the hearing. The Petitioners, Alan and Janet Stanford (Stanford) were represented by Attorney Carla J. Higginson. San Juan County (County) was represented by Cameron O. Carter, Deputy Prosecuting Attorney.

The Board received sworn testimony of witnesses, exhibits, and argument on behalf of the parties. Having fully considered this record, the Board enters the following:

¹ Judy Wilson and Mary Alyce Burleigh were not able to attend on the second day of hearing, but listened to the recording from the hearing and participated in the decision.

1 FINDINGS OF FACT

2 I.

3 The Stanfords submitted an application for a substantial development permit (SDP) to
4 build a joint-use dock on Orcas Island. The site is located on the southern side of the Island near
5 the mouth of Deer Harbor, on the shores of Spring Point. The dock is intended to serve four lots,
6 Lots 16, 17, 18, and 19. The Stanfords own Lots 16 and 17. Lot 18 is owned by the Stanford's
7 adult children, but is currently vacant and undeveloped. Lot 19 is owned by Paul and Charlotte
8 Bushue, and is currently vacant and undeveloped. A proposed joint use agreement for the four
9 lots was submitted with the application. The Stanfords propose to use the joint dock for moorage
10 of their 47 foot Grand Banks motor boat, as well as for moorage of a 21 foot sailboat owned by
11 their children. *Testimony of Stanford, Exs. A-1, A-2, A-4, A-5.*

12 II.

13 The shoreline environment in the area of the proposed dock is designated rural
14 residential. There are few docks in the immediate vicinity on the west side of Deer Harbor. The
15 proposed dock, if allowed, would be the only dock along 700 linear feet of shoreline. *Exs. A-1,*
16 *A-2, A-4, and A-5.*

17 III.

18 There are four commercial marinas on Orcas Island. The closest marina to the Stanford's
19 residence, Cayou Quay, is approximately two miles away. At the time of the San Juan County
20 Hearing Examiner's decision on July 1, 2005, Cayou Quay did not have moorage available for a

1 large boat the size of the Sanford's. At the time of the Shorelines Hearings Board proceeding on
2 June 28, 2006, Cayou Quay had a slip scheduled to become available for a 47 foot boat in one
3 week, and another one in September, 2006. The slip coming available in September of 2006 was
4 currently being used by a friend of Mr. Stanford's who also has a 47 foot boat. Mr. Stanford had
5 arranged this summer moorage for his friend. On July 12, 2006, two weeks prior to the second
6 day of the Shorelines Hearings Board proceeding, Cayou Quay marina did not have a slip
7 available for a 47 foot boat. *Testimony of Carpenter, Otis, Stanford, Ex. A-5.*

8 IV.

9 In July of 2005, Deer Harbor Marina, which is located approximately 2 and ½ miles from
10 the Stanford residence, did have permanent moorage available for a 47 foot boat. At the time of
11 the Shorelines Hearings Board proceeding in June of 2006, Deer Harbor again had permanent
12 moorage available for a 47 foot boat. *Testimony of Broman, Ex. A-5.*

13 V.

14 The other two marinas on Orcas Island are West Sound Marina and Bay Head Marina.
15 West Sound Marina is located approximately six miles from the Stanford residence. West Sound
16 Marina did not have a slip available for a 47 foot boat on July 12, 2006, nor were they able to
17 predict when they would have one. The other marina, Bay Head, is the farthest from the
18 Stanford residence, at approximately 11 miles. Bay Head did have a slip available for a large
19 boat in May through July of 2006, but a boat was scheduled to fill that slip the beginning of
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1 August. Bay Head had side ties² available for a boat the size of the Stanfords. *Testimony of*
2 *Sanders, Otis.*

3 VI.

4 When experts design marinas, the guideline frequently used for the motor vehicle parking
5 to boat ratio is one parking space for every two boat berths. Cayou Quay has approximately 45
6 parking spaces in a gravel lot, although these are not striped, defined spots. It has slips for
7 approximately 100 boats. The owner of Cayou Quay, Norm Carpenter, testified that in his 15
8 years of ownership of the Marina, he has never had complaints about parking availability at the
9 Marina. The Stanfords moored their boat at Cayou Quay for two summers, and made no
10 complaints about the parking to Mr. Carpenter. *Testimony of Carpenter, Layton, Otis, Ex A-10,*
11 *A-11, A-21.*

12 VII.

13 Deer Harbor Marina has approximately 125 boat berths, and 21 dedicated parking spaces.
14 The ratio of designated parking spaces to boat berths is therefore well below the recommended
15 two to one average. There are five additional parking spaces that are shared with the post office,
16 and a few loading zone spaces. There are a number of other, unofficial areas used for parking in
17 and around Deer Harbor Marina, including the top of Jack and Jill Lane and along upper Deer
18 Harbor Road. The Marina also uses parking designated for the neighboring (but separately
19 owned) resort. This use by Marina employees and customers occurs on an informal, casual

20 ² “Side ties” are not individual berths. They consist of spaces along an open pier. Owners generally prefer berths to
21 side ties because they are easier to access.

1 basis. There are a number of uses in the marina area besides boat moorage, such as a restaurant,
2 a store, charter boat rentals, whale watching tours, and kayak rentals. The people participating in
3 these activities compete for parking with people who moor boats at the marina. *Testimony of*
4 *Broman, Layton, Otis, Exs. A-2 A-8, A-9, A-12, A-13, A-14, A-22. .*

5 VIII.

6 During the summer, parking at Deer Harbor Marina is difficult, but not impossible. Marc
7 Broman, the Harbor Master at Deer Harbor, has heard occasional complaints about parking at the
8 Marina. However, he is not aware of anyone ever having to leave the Marina because of lack of
9 parking. Parking is generally more available during the morning and evening than at mid-day.
10 Mr. Broman describes the parking in July and August as “tight” but “doable.” Deer Harbor
11 Marina does not take enforcement action regarding parking violations at the Marina, unless a car
12 is left at the Marina for an extensive period of time. The Marina currently uses a permitting
13 system for kayakers who park at the Marina. Mr. Broman stated it would not be hard to move to
14 a permitting system for all parking. He further indicated that if he did start to get complaints
15 about people being turned away from the marina due to lack of parking, he could provide permits
16 to permanent moorage customers and he could also explore adding additional parking spots. A
17 shuttle service is also available during the summer months to take people to the Marina. The
18 parking situation at the Deer Harbor Marina is under discussion at a planning group for Deer
19 Harbor called the Deer Harbor Hamlet Plan Review Committee. *Testimony of Broman, Otis, Ex.*
20 *A-9.*

IX.

The San Juan County staff reviewed the proposed joint-use dock application and analyzed its compliance with applicable shoreline master program regulations. Staff concluded that the application complied with all of the regulations except the Shoreline Master Plan provision that requires the applicant demonstrate that alternative moorage is not adequate or feasible. On this basis, the staff recommended that the application be denied. The hearing examiner, after reviewing the report of Community Development and Planning, and following a public hearing, concurred with the County staff's recommendation. The Stanfords appealed the hearing examiner's decision to the San Juan County Commissioners. The Board of Commissioners affirmed the hearing examiner's decision, and its decision was appealed to this Board. *Exs. A-1, A-2, A-4, A-5, A-6.*

X.

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over this matter pursuant to RCW 90.58.180(1). Petitioners have the burden of proving, by a preponderance of the evidence, that the proposed SDP is consistent with the provisions of the Shoreline Management Act (SMA) and the San Juan County Shoreline Master Plan (SMP). Both the scope and standard of review for this matter are *de novo*. WAC 461-08-500(1).

1 II.

2 The proposed dock is a substantial development. RCW 90.58.030(3)(e). Under the SMP,
3 docks are permitted in Rural Residential environments subject to compliance with policies and
4 regulations of SMP. SJCC 18.50.190(K)(3).

5 III.

6 The SMP reflects San Juan County's clear policy choice to control the proliferation of
7 docks along the shorelines of its islands. See, Comprehensive Plan, Section B, Element 3,
8 Shoreline Master Program (Goals and Policies) 3.5C. To spare San Juan County from the so-
9 called "porcupine effect" created by numerous individual private docks and piers on the same
10 shoreline, the SMP contains a strict hierarchy for the approach to decisions related to docks and
11 piers. In general, mooring buoys and floats are preferred over docks and piers, and joint-use
12 docks are preferred to single-use docks. Comprehensive Plan, 3.5 C, Docks and Piers, Nos. 6,
13 11, 12, and 15. See also SJCC 18.50.190(C)

14 IV.

15 The SMP goes on to set a standard for approval of applications for docks and piers
16 associated with single-family residences, as follows:

17 Applications for nonexempt docks and piers associated with single-family residences
18 shall not be approved until:

- 19 a. It can be shown by the applicant that existing facilities are not adequate or
20 feasible for use;
21 b. Alternative moorage is not adequate or feasible; and

1 c. The applicant shall have the burden of providing the information requested for
2 in subsections (A) and (B) of this section, and shall provide this information in a
manner prescribed by the administrator.

3 SJCC 18.50.190.G.5³

4 V.

5 The County staff concluded in their review of the Stanfords' proposal that a mooring
6 buoy was not feasible, and the Hearing Examiner concurred with this conclusion. The possible
7 use of a mooring buoy is not raised as an issue in this appeal. Further, the Hearing Examiner
8 concluded, and the County does not challenge on appeal, that the dock is a joint-use dock. The
9 sole issue presented by the parties for consideration in this appeal is whether existing commercial
10 moorage facilities are adequate or feasible for use under that provision of the SMP which
11 requires analysis of alternative moorage options.

12 VI.

13 SJCC 18.50.190 G.5 has been applied by this Board in past cases. In *Inskeep v. San Juan*
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³ The hearing examiner analyzed this case under subpart (a) of the cited provision, which refers to "existing
18 facilities." The County argued at the hearing before this Board that the appropriate provision is subpart (b) which
19 refers to "alternative moorage." The County's analysis on this point is that "existing facilities" refers to the facilities
20 on the Stanfords' own property and that "alternative moorage" refers to off-site options. The Stanfords do not
21 appear to take a position on this question, and the parties' statement of the issue in the pre-hearing order is not
helpful. See Pre-hearing Order, section III ("Are existing commercial moorage facilities adequate or feasible for
use?") The Board concludes that the appropriate analysis here is under (b). However as a practical matter the
distinction makes little difference since both parties were clear at the hearing that the sole issue is the availability of
alternative commercial moorage off site.

County, SHB No. 98-033 (1999), the Board stated the test to be whether existing facilities, alternative moorage and alternative sites are not “enough or good enough for what is required or needed,” “barely satisfactory,” “suitable,” or “capable of being used.”

Inskip, CL IV (citations deleted). To be “capable of being used” alternative moorage must be available. An applicant for a permit does not meet the criteria by showing that a private dock is more convenient to access and use than other facilities in the area. *Close v San Juan County*, SHB No. 99-021(2000).

VII.

The concept of availability involves a temporal dimension. The Stanfords argued that application of this standard was a “moving target.” At what point in the process, and over what time horizon, does an applicant need to establish that moorage is not available to qualify for a dock? The Board concludes that this standard does not create an insurmountable proof problem for an applicant that has been diligently seeking alternative commercial moorage. The Hearing Examiner for San Juan County, who describes himself as one who has “reviewed a large additional number of applications for docks over the last several years,” struggled with the temporal dimension of availability. He suggests the appropriate time frame be “presently available or likely to become available within a reasonable waiting period.”

VIII.

The Board agrees with the hearing examiner’s suggested time frame. The Board concludes an applicant must show more than just unavailability of moorage at a particular point

1 in time, such as the time of filing the application, or at the time of the hearing before the County.
2 SJCC 18.50.190.G5 should be read to include availability within a reasonable waiting period in
3 the definition of “adequate or feasible.” The length of a reasonable waiting period would depend
4 on the facts of the particular case, including such relevant considerations as time of year and size
5 of boat. For example, an applicant could reasonably be expected to have to wait longer for
6 moorage for a larger boat since fewer commercial slips are available, than for a smaller boat.
7 Similarly, an applicant seeking moorage during peak summer boating season can reasonably be
8 expected to have to wait longer than someone seeking moorage during the off season.

9 IX.

10 Applying the time frame to the facts of this case, the Stanfords have failed to meet their
11 burden of demonstrating that commercial moorage is unavailable or unlikely to come available
12 within a reasonable waiting period. The evidence presented to the Board showed that there have
13 been multiple opportunities throughout the relevant time period (from the date of application to
14 the date of this Board’s proceedings) for the Stanfords to obtain commercial moorage, either at
15 Cayou Quay, Deer Harbor, or Bay Head.

16 X.

17 The Stanfords argue that Deer Harbor is not adequate because there is insufficient
18 parking and therefore access to their boat would be difficult. This argument fails for two
19 reasons. First, there have been slips available for a boat the size of the Stanfords at Cayou Quay
20 and Bay Head during the summer of 2006, while this proceeding was ongoing before this Board.

1 Therefore, even if Deer Harbor was treated as unavailable, the Stanfords' case fails because of
2 the availability of other adequate moorage at other facilities during a reasonable time frame.
3 Second, absent extreme circumstances such that boat owners would not have access to their
4 boats on a recurring basis, the Board concludes that parking is ordinarily a matter of
5 convenience. Parking at Deer Harbor during July and August is difficult but not impossible.
6 The rest of the year, parking is not a problem. Some difficulty finding a nearby parking space
7 for a few months a year does not prohibit access to a boat so as to justify a private dock,
8 especially given San Juan County's strong policy of protecting its shorelines from the
9 proliferation of private docks. At best, the Stanfords have proven that it would be more
10 convenient to them to have a private dock, but have failed to show that alternate moorage is not
11 adequate or feasible, given the availability of moorage space for a 47 foot boat at various, near-
12 by marinas at different times over a many month period.

13 XI.

14 The Board concludes that adequate and feasible alternate moorage is available to the
15 Stanfords, and therefore their application for a joint use dock was appropriately denied by the
16 County.

17 XII.

18 Any finding of fact deemed to be a conclusion of law is hereby adopted as such.

19 From the foregoing, the Board issues this:
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SO ORDERED this 20th day of September 2006.

William H. Lynch, Chair

Kathleen D. Mix, Member

Andrea McNamara Doyle, Member

Judy Wilson, Member

Mary Alyce Burleigh, Member

Peter Philley, Member

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